

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 20-921

MAVERICK MOSSBERG SHOTGUN, 12-GAUGE,
SERIAL NUMBER MV75318M,

SMITH & WESSON SHOTGUN, 12-GAUGE,
SERIAL NUMBER 6B6930,

BERETTA PX4 STORM PISTOL, .40-CALIBER,
SERIAL NUMBER PJ18064,

BERETTA PX4 STORM PISTOL, 9MM,
SERIAL NUMBER PZ513001,

WALTHER PPK PISTOL, .380-CALIBER,
SERIAL NUMBER 5530BANPPK,

STAR BONIFACIO ECHEVERRIA SUPER PISTOL,
9MM, SERIAL NUMBER ET4065,

RUGER BLACKHAWK REVOLVER, .357-CALIBER,
SERIAL NUMBER 38-23475,

CHARTER ARMS UNDERCOVER REVOLVER,
.38-CALIBER, SERIAL NUMBER 703931,

SIG-SAUER P220 PISTOL, .45-CALIBER,
SERIAL NUMBER G290613,

KIMBER CUSTOM TLE II PISTOL, 9MM,
SERIAL NUMBER KF42194,

FNH (FABRIQUE NATIONAL HERSTAL) USA
FNS-40 PISTOL, .40-CALIBER,
SERIAL NUMBER GKT0100927,

SAVAGE RIFLE, UNKNOWN CALIBER,
SERIAL NUMBER 871,

DPMS (DEFENSE PROCUREMENT
MANUFACTURING SERVICES) A-15 RIFLE,
MULTIPLE CALIBERS, SERIAL NUMBER
FFH269709,

IWI (ISRAEL WEAPON INDUSTRIES) TAVOR
TS12 SHOTGUN, 12-GAUGE,
SERIAL NUMBER B0001750,

MORRISSEY AAM-47 RIFLE, 7.62 X 39MM,
SERIAL NUMBER AA007646,

WINCHESTER 94 RIFLE, .30-30-CALIBER,
SERIAL NUMBER 1024658,

CENTURY ARMS INTERNATIONAL RAS47 PISTOL,
7.62 X 39MM, SERIAL NUMBER RAS47108964,

REMINGTON ARMS COMPANY MODEL 870
EXPRESS SHOTGUN, 12-GAUGE,
SERIAL NUMBER D698972A,

AERO PRECISION X15 RIFLE, .223-CALIBER,
SERIAL NUMBER USA272 42,

BUSHMASTER FIREARMS BA50 RIFLE,
.50-CALIBER, SERIAL NUMBER SD000951R,

RUGER PRECISION RIFLE, .338-CALIBER,
SERIAL NUMBER 1804-06746,

MOSSBERG 500 SHOTGUN, 12-GAUGE,
SERIAL NUMBER P524000,

PANZER ARMS BP-12 SHOTGUN, 12-GAUGE,
SERIAL NUMBER BP-18-03844,

IVER JOHNSON RIFLE, .22-CALIBER,
SERIAL NUMBER 000214

ARSENAL SAM7SF RIFLE, 7.62 X 39MM,
SERIAL NUMBER BE 53 2891,

RUGER M77 MK II RIFLE, .22-250-CALIBER,
SERIAL NUMBER 782-60569,

122 ROUNDS AMERICAN EAGLE AMMUNITION
ASSORTED CALIBERS,

and

122 ROUNDS AMERICAN EAGLE AMMUNITION,
.50-CALIBER BMG,

Defendants-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

NATURE OF THE ACTION

1. This is a civil action to forfeit and condemn to the use and benefit of the United States of America property involved in violations of 18 U.S.C. § 922(a) and (g) that is subject to forfeiture pursuant to 18 U.S.C. § 924(d)(1).

DEFENDANTS *IN REM*

2. The defendants *in rem* consist of the following:
- i. Maverick Mossberg Shotgun, 12-Gauge, Serial Number MV75318M,
 - ii. Smith & Wesson Shotgun, 12-Gauge, Serial Number 6B6930,
 - iii. Beretta PX4 Storm Pistol, .40-Caliber, Serial Number PJ18064,
 - iv. Beretta PX4 Storm Pistol, 9mm, Serial Number PZ513001,
 - v. Walther PPK Pistol, .380-Caliber, Serial Number 5530BANPPK,
 - vi. Star Bonifacio Echeverria Super Pistol, 9mm, Serial Number ET4065,
 - vii. Ruger Blackhawk Revolver, .357-Caliber, Serial Number 38-23475,
 - viii. Charter Arms Undercover Revolver, .38-Caliber, Serial Number 703931,
 - ix. Sig-Sauer P220 Pistol, .45-Caliber, Serial Number G290613,
 - x. Kimber Custom TLE II Pistol, 9mm, Serial Number KF42194,
 - xi. FNH (Fabrique National Herstal) USA FNS-40 Pistol, .40-Caliber, Serial Number GKU0100927,
 - xii. Savage Rifle, Unknown Caliber, Serial Number 871,
 - xiii. Winchester 94 Rifle, .30-30-Caliber, Serial Number 1024658,
 - xiv. Remington Arms Company Model 870 Express Shotgun, 12-Gauge, Serial Number D698972A,
 - xv. Aero Precision X15 Rifle, .223-Caliber, Serial Number USA272 42,
 - xvi. Bushmaster Firearms BA50 Rifle, .50-Caliber, Serial Number SD000951R,
 - xvii. Ruger Precision Rifle, .338-Caliber, Serial Number 1804-06746,
 - xviii. Mossberg 500 Shotgun, 12-Gauge, Serial Number P524000,

- xix. Panzer Arms BP-12 Shotgun, 12-Gauge, Serial Number BP-18-03844,
- xx. Iver Johnson Rifle, .22-Caliber, Serial Number 000214,
- xxi. Arsenal SAM7SF Rifle, 7.62 x 39mm, Serial Number BE 53 2891,
- xxii. Ruger M77 MK II Rifle, .22-250-Caliber, Serial Number 782-60569,
- xxiii. 122 Rounds American Eagle Ammunition Assorted Calibers, and
- xxiv. 122 Rounds American Eagle Ammunition, .50-Caliber BMG,

(Hereafter referred to as “Defendant Firearms and Ammunition”), and

- xxv. DPMS (Defense Procurement Manufacturing Services) A-15 Rifle, Multiple Calibers, Serial Number FFH269709,
- xxvi. IWI (Israel Weapon Industries) Tavor TS12 Shotgun, 12-Gauge, Serial Number B0001750,
- xxvii. Morrissey AAM-47 Rifle, 7.62 x 39mm, Serial Number AA007646,
- xxviii. Century Arms International RAS47 Pistol, 7.62 x 39mm, Serial Number RAS47108964

(Hereafter referred to as “Defendant Foiled Straw Purchases”).

3. The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) seized the Defendant Firearms and Ammunition on February 13, 2020, in the District of New Mexico.

4. ATF seized Defendant Foiled Straw Purchases on February 18, 2020, in the District of New Mexico.

5. The Defendant Firearms and Ammunition and Defendant Foiled Straw Purchases are now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

6. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a) and 1356.

7. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and the property is found in this district. Upon the filing of this complaint, the Defendant Firearms and Ammunition and Defendant Foiled Straw Purchases will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

8. On February 13, 2020, ATF Task Force Officer (“TFO”) K. Matthews and Eddy County Sheriff’s Office Deputy E. Aranda executed a State of New Mexico district court search warrant at the residence of Jimmy Hernandez and Serena Hernandez located at 75 Donaldson Farm Road, Loving, New Mexico 88256.

9. TFO Matthews found and seized approximately twenty-six (22) firearms and 244 rounds of ammunition at the location (Defendant Firearms and Ammunition). The firearms and ammunition were stored throughout the residence. Numerous firearms were readily accessible.

10. TFO Matthews also discovered several Mason-style jars full of marijuana and two sandwich baggies containing mushrooms stored in a safe inside the residence along with multiple firearms.

11. On the date of the seizure, Jimmy Hernandez admitted to being a felon. He further acknowledged that he knew he could not possess firearms. Nevertheless, he admitted that he shot weapons contained in the residence with his family. Lastly, he admitted to using marijuana.

12. On the date of the seizure, Serena Hernandez admitted that she regularly uses marijuana.

13. On February 18, 2020, TFO Matthews met with a local gun store owner and federal firearms licensee (“FFL”) who had refused to transfer firearms to Serena Hernandez, believing that she was a straw purchaser. TFO Matthews seized four firearms in the FFL’s possession that Serena Hernandez had ordered delivered to the FFL for transfer to her (Defendant Foiled Straw Purchases).

14. The Defendant Firearms and Ammunition and Defendant Foiled Straw Purchases were not manufactured in the State of New Mexico.

FIRST CLAIM FOR RELIEF

15. The United States incorporates by reference the allegations in paragraphs 1 through 14 as though fully set forth.

16. 18 U.S.C. § 924(d)(1) subjects to forfeiture any firearm or ammunition involved in or used in any knowing violation of section 922(g).

17. Defendant Firearms and Ammunition are subject to arrest and forfeiture to plaintiff under 18 U.S.C. § 924(d)(1) because the property was involved in or used in knowing violation of 18 U.S.C. § 922(g)(1).

SECOND CLAIM FOR RELIEF

18. The United States incorporates by reference the allegations in paragraphs 1 through 14 as though fully set forth.

19. 18 U.S.C. § 924(d)(1) subjects to forfeiture any firearm or ammunition involved in or used in any knowing violation of section 922(g).

20. Defendant Firearms and Ammunition are subject to arrest and forfeiture to plaintiff under 18 U.S.C. § 924(d)(1) because the property was involved in or used in knowing violation of 18 U.S.C. § 922(g)(3).

THIRD CLAIM FOR RELIEF

21. The United States incorporates by reference the allegations in paragraphs 1 through 14 as though fully set forth.

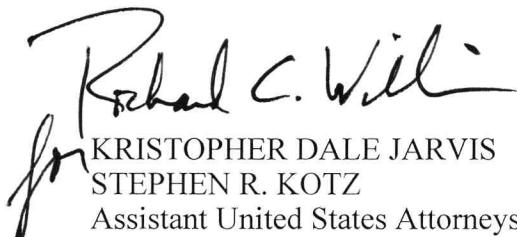
22. 18 U.S.C. § 924(d)(1) subjects to forfeiture any firearm or ammunition involved in or used in any knowing violation of section 922(a)(6).

23. Defendant Foiled Straw Purchases are subject to arrest and forfeiture to plaintiff under 18 U.S.C. § 924(d)(1) because the property was involved in or used in knowing violation of 18 U.S.C. § 922(a)(6).

WHEREFORE: Plaintiff seeks arrest of Defendant Firearms and Ammunition and Defendant Foiled Straw Purchases and forfeiture of same to Plaintiff, determination of the validity and priority of claims of the Claimants and any Unknown Claimants to the Defendant Firearms and Ammunition and Defendant Foiled Straw Purchases, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney


for KRISTOPHER DALE JARVIS
STEPHEN R. KOTZ
Assistant United States Attorneys
200 N. Church St.
Las Cruces, NM 88001
(575) 522-2304

28 U.S.C. § 1746 DECLARATION

I am a Task Force Officer with the Bureau of Alcohol, Tobacco, Firearms and Explosives who has read the contents of the Complaint for Forfeiture In Rem to which this Declaration is attached; and the statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

Dated: 09/02/2020



Kevin Matthews, Task Force Officer
Bureau of Alcohol, Tobacco, Firearms and
Explosives

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
MAVERICK MOSSBERG SHOTGUN, 12-GAUGE,
SERIAL NUMBER MV75318M, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kristopher Dale Jarvis, Assistant United States Attorney
200 N. Church Street, Las Cruces, NM 88001
575-522-2304

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|---|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	CIVIL RIGHTS PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FORFEITURE/PENALTY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. § 924(d)(1)

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND S

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/09/2020

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Richard C. Willis Jr. EDJ

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE